

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALI SALEEM BEY, et al.,
Plaintiffs,
v.
CITY OF OAKLAND,
Defendant.

Case No. [14-cv-01626-JSC](#)

**ORDER ALLOWING SUPPLEMENTAL
OPPOSITION**

Re: Dkt. No. 33

Plaintiffs Ali Saleem Bey and John Muhammed Bey, proceeding pro se, bring this action against the City of Oakland (“Defendant”). In the Second Amended Complaint (“SAC”), Plaintiffs allege numerous civil rights violations by the Oakland Police Department (“OPD”) and its officers, generally contending that the OPD failed to adequately investigate Plaintiffs’ internal affairs division complaints due to racial and religious discrimination against Plaintiffs as members of the Black Muslim community. (Dkt. No. 15.) The Court previously reviewed Plaintiffs’ SAC pursuant to Section 1915(e)(2) and concluded that Plaintiffs’ claims were sufficiently pleaded to proceed to service. (Dkt. No. 16 (“Section 1915 Order”).) The Court clarified that its determination that the SAC stated a claim for the purposes of Section 1915 was without prejudice to Defendant moving to dismiss the claims on any grounds. (*Id.* at 8.)

Now pending before the Court is Defendant’s motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). (Dkt. No. 33.) In their opposition to Defendant’s arguments, Plaintiffs repeatedly cite the Court’s Section 1915 Order as authority that demonstrates that the SAC is sufficiently pleaded. (*See, e.g.*, Dkt. No. 43 at 8 (“The Court has reviewed the SAC and ruled . . . that Plaintiffs’ complaint . . . does in fact state claims that relief can be granted on.”); *id.* at 12, 13, 14 (quoting the Section 1915 Order’s language that Plaintiffs

1 had pleaded equitable tolling for the purposes of Section 1915 review); *id.* at 15, 16, 18 (quoting
2 the Section 1915 Order's language that the SAC states a claim upon which relief can be granted);
3 *id.* at 18 (quoting the Section 1915 Order's language declining "to find that the intracorporate
4 conspiracy doctrine prevents Plaintiff's claims from surviving Section 1915 review."))

5 Plaintiffs misunderstand the purpose and effect of the Court's Section 1915 Order. While
6 review under Section 1915(e)(2) parallels the language of Federal Rule of Civil Procedure
7 12(b)(6) and therefore involves the same inquiry of whether the allegations state a plausible claim
8 for relief, allowing a complaint to proceed to service under Section 1915 does not mean that the
9 complaint states a claim for the purposes of withstanding a defendant's motion to dismiss. This is
10 especially true where, as here, the Section 1915 Order expressly stated that its determination was
11 without prejudice to Defendant moving for dismissal on any grounds. (*See* Dkt. No. 16 at 8.)
12 Given their misunderstanding, the Court will permit Plaintiffs to file a supplemental opposition
13 addressing the merits of Defendant's arguments without reliance on the Court's Section 1915
14 Order as authority. Plaintiffs' supplemental opposition, if any, shall be filed by **November 19,**
15 **2015**. Defendant may file a supplemental reply by **November 25, 2016**. In light of this additional
16 briefing, the motion hearing previously set for November 19, 2015 is CONTINUED to **December**
17 **3, 2015** at 9:00 am.

18 **IT IS SO ORDERED.**

19 Dated: November 6, 2015

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22 JACQUELINE SCOTT CORLEY
23 United States Magistrate Judge
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